

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Heidi Guzman	Team: Squad #16	CCRB Case #: 202200762	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Monday, 10/25/2021 3:14 AM	Location of Incident: 11-39 49th Avenue Apt. 808	18 Mo. SOL 4/25/2023	Precinct: 108		
Date/Time CV Reported Fri, 02/04/2022 3:38 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Fri, 02/04/2022 3:38 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. Officers			
2. SGT Donald Pak	05328	930901	108 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. PO Keith Siebner	27060	967337	108 PCT
2. PO Jorge Perez	12249	951042	108 PCT
3. PO Jason Oconnor	26668	969254	108 PCT
4. PO Kwame Agyei	01768	965647	108 PCT
5. PO Ishmael Goodwin	17332	967902	108 PCT
6. PO Corey White	29615	937728	108 PCT
7. Kerry Rowley		937448	
8. DTS Paul Cella	04725	923650	ESS 09
9. DTS Daniel Neems	07489	935393	ESS 10
10. DTS Steven Orlando	04489	934649	ESS 09
11. DTS Matthew Gale	02971	948993	ESS 10
12. SGT Stephen Daly	00944	945169	ESS 09
13. CPT Lapkeung Lee	00000	939789	TRAFF ENF DIST

Officer(s)	Allegation	Investigator Recommendation
A.SGT Donald Pak	Abuse: Sergeant Donald Pak supervised the entry of § 87(2)(b) in Queens.	
B.SGT Donald Pak	Abuse: Sergeant Donald Pak supervised the damage of § 87(2)(b) property.	
C. Officers	Abuse: Officers damaged § 87(2)(b) property.	
D. Officers	Abuse: Officers damaged § 87(2)(b) property.	
§ 87(2)(g), § 87(4-b)		

Case Summary

§ 87(2)(b) filed this complaint with the CCRB via telephone on February 4, 2022.

At approximately 1:45 a.m. on October 25, 2021, § 87(2)(b) and her then-boyfriend, § 87(2)(b) were involved in a domestic dispute at § 87(2)(b) in Queens. Police officers from the 108th Precinct, directed by Sergeant Donald Pak, forcibly entered § 87(2)(b) home without a warrant to remove and arrest § 87(2)(b) (**Allegation A: Abuse of Authority**, § 87(2)(g) by breaking down § 87(2)(b) door (**Allegation B: Abuse of Authority**, § 87(2)(g) § 87(2)(b) alleged that during the entry, officers broke two couches in her home (**Allegation C: Abuse of Authority**, § 87(2)(g) (**Allegation D: Abuse of Authority**, § 87(2)(g) § 87(2)(g), § 87(4-b) was arrested and charged with strangulation, criminal mischief, assault, resisting arrest, and harassment.

Body worn camera (“BWC”) footage of this incident was obtained from thirteen officers (Board Review 01).

Findings and Recommendations

Allegation A – Abuse of Authority: Sergeant Donald Pak supervised the entry of § 87(2)(b) in Queens.

Allegation B – Abuse of Authority: Sergeant Donald Pak supervised the damage of § 87(2)(b) property.

In her statement to the CCRB, § 87(2)(b) testified that she was loudly arguing with her ex-boyfriend § 87(2)(b) inside her apartment. She wanted § 87(2)(b) to leave. He refused. During the argument, § 87(2)(b) was injured, resulting in two puncture wounds to her leg. At approximately 2:00 a.m., § 87(2)(b) went to the lobby of her building to get away from § 87(2)(b). When she arrived in the lobby, the building doorman told her that he had called the police.

When officers arrived on scene, § 87(2)(b) reported that she had puncture wounds, that § 87(2)(b) had bitten her fingers, and that he had attempted to strangle her. § 87(2)(b) initially told officers that she just wanted § 87(2)(b) out of her house. Additional officers arrived and she overheard that they found a knife outside of the apartment door. § 87(2)(b) asked an officer what was happening, and he informed her that officers might have to break down her door to get § 87(2)(b) out. After that point, she pleaded with the officers to not break down the door because she had an ongoing Housing Court case with building management.

§ 87(2)(b) further testified that she asked if she could try to convince § 87(2)(b) to voluntarily leave; officers brought her to the door, where she begged § 87(2)(b) to come out. He refused. § 87(2)(b) eventually went back downstairs to the lobby. Approximately fifteen minutes later, officers from the “SWAT” team arrived. § 87(2)(b) remained in the lobby until § 87(2)(b) was removed. § 87(2)(b) returned to her apartment after § 87(2)(b) was removed. She testified that the metal frame and automatic lock on her door were “bent” backwards and “twisted up.”

In his statement to the CCRB, Sergeant Pak testified that he received a call for a domestic or family dispute with assault, possibly involving a weapon. Sgt. Pak did not speak to § 87(2)(b) directly, but when he first saw her in the mailroom of her building, she was “bloody from top to bottom” and bleeding from a wound in her thigh. Officers informed Sgt. Pak that § 87(2)(b) had been strangled and stabbed by an individual identified by the investigation as § 87(2)(b) who was

inside her apartment on the § 87(2)(b) wanted § 87(2)(b) removed. Officers had already tried opening the door using a master key, but § 87(2)(b) had locked himself inside with a latch. Sgt. Pak went to the § 87(2)(b) and tried to cajole § 87(2)(b) to open the door, but § 87(2)(b) refused.

Sgt. Pak further called the Emergency Services Unit (ESU) to assist in removing § 87(2)(b). Several factors influenced the decision to call the ESU: he wanted to ensure § 87(2)(b) safety; § 87(2)(b) was a criminal who had assaulted and stabbed § 87(2)(b); § 87(2)(b) refused to exit voluntarily; and the incident was a potential felony. Sgt. Pak also stated that he was concerned that there was a knife or other object that could be used as a weapon inside the apartment. He further stated that he hoped that the ESU could talk the boyfriend out. Sgt. Pak testified that Duty Captain Lapkeung Lee arrived on scene, and that Captain Lee affirmed his decision to call the ESU. Sgt. Pak stated that he did not learn exactly how the ESU had entered the apartment because the ESU had ordered officers to clear the area around the apartment door. He further stated that he did not learn whether § 87(2)(b) had changed her mind about having her boyfriend removed.

The 911 calls, event summary, and BWC footage recovered by the investigation set forth the following timeline. At around 1:45 a.m. on October 25, 2021, several neighbors called 911 and reported that § 87(2)(b) was dragging § 87(2)(b) through the hallway and that she was screaming about her leg. Additionally, the building doorman called 911 and reported that § 87(2)(b) had been stabbed. None of the callers could confirm if § 87(2)(b) had used a weapon.

The body-worn camera footage obtained from the officers sets forth the remainder of the evening's chronology (Board Review 01). Officers Jorge Perez and Keith Siebner arrived at the location at around 1:53 a.m. to find § 87(2)(b) in the lobby. § 87(2)(b) had sustained bruises and cuts, as well as a small puncture wound in her thigh. She attributed the leg wound to a household item with hooks on it that got into her leg accidentally during the physical altercation and repeatedly denied that § 87(2)(b) stabbed her. § 87(2)(b) was inside her apartment on the § 87(2)(b) and she asked officers to remove him. At approximately 1:55 a.m., more officers arrived. § 87(2)(b) remained in the lobby with Officers Kwame Agyei and Jason O'Connor. Meanwhile, Officers Perez, Siebner, Ishmael Goodwin, and Corey White tried to get into the apartment using a master key provided by the doorman. However, § 87(2)(b) locked the door from the inside with a latch and they were unable to enter.

At approximately 1:58 a.m., Patrol Supervisor Sergeant Donald Pak arrived, along with Officer Kerry Rowley. During the interaction, both § 87(2)(b) and Officer Rowley affirm that they have had prior interactions with one another. Officer Rowley informed Sergeant Pak that § 87(2)(b) and § 87(2)(b) are emotionally disturbed persons. Sergeant Pak and the officers on scene unsuccessfully attempted to coax § 87(2)(b) out of the apartment. At approximately 2:10 a.m., Sgt. Pak requested the Emergency Services Unit ("ESU") to come to the apartment, stating that there is a barricaded perpetrator.

While the officers awaited the arrival of the ESU, § 87(2)(b) was brought up to the § 87(2)(b) at approximately 2:22 a.m. § 87(2)(b) unsuccessfully attempted to convince § 87(2)(b) to leave her apartment voluntarily. At approximately 2:25 a.m., officers escorted § 87(2)(b) back down to the lobby, where she stayed for the remainder of this incident. Officers continued try to convince § 87(2)(b) to voluntarily come out. As the evening wore on, § 87(2)(b) grew more agitated and concerned about the possibility of her door being broken to remove § 87(2)(b). She openly and loudly pleaded with Officers Agyei and O'Connor to "call it off" and "please leave." At approximately 2:42 a.m., Duty Captain Lee and the ESU arrived. The ESU attempted to negotiate

with § 87(2)(b). At 2:45 a.m., Sergeant Stephen Daly of the ESU asked the officers what § 87(2)(b) will be charged with. Captain Lee motioned to Sgt. Pak, who stated that § 87(2)(b) beat § 87(2)(b) up, and that § 87(2)(b) has a “cut.” Sgt. Daly asked if the charge is assault, and Sgt. Pak responded affirmatively.

At approximately 2:51 a.m., § 87(2)(b) called 911, who connected her to Internal Affairs. She told IAB that she wanted the officers to leave and that she did not want them to break down her door to enter.

At 2:51 a.m., the ESU broke the peephole in § 87(2)(b) door. Until approximately 3:12 a.m., the ESU continued to try to convince § 87(2)(b) to leave voluntarily. § 87(2)(b) refused and barricaded himself inside the apartment by pressing furniture up against the door. At approximately 3:14 a.m., the ESU entered the apartment by breaking down § 87(2)(b) door. After a brief security sweep, the ESU officers apprehended § 87(2)(b).

According to the arrest report, § 87(2)(b) was arrested on various felony charges, including strangulation (Board Review 02). § 87(2)(b) § 87(2)(b)

Patrol Guide § 221-13 regarding Mentally Ill or Emotionally Disturbed Persons sets forth that where the emotionally disturbed person is isolated or contained but will not leave voluntarily, members of service should request the Hostage Negotiation Team and the Tactical Assistance Response Unit and comply with Patrol Guide Procedures 221-14 on Hostages and Barricaded Persons “where appropriate” (Board Review 03). § 221-14 provides the procedures when officers are responding to the scene of an incident where “persons are being held hostage or barricaded persons will not voluntarily surrender” (Board Review 04). The Patrol Supervisor on the scene should request the ESU, H.N.T., and T.A.R.U. are enroute to the scene or otherwise request them. The procedures largely pertain to active hostage situations, where a “suspect takes a person under his or her control and subjects that person the risk of bodily harm for the purpose of furthering a criminal act or to facilitate escape.”

Warrantless entries are presumptively unreasonable. *Payton v. New York*, 445 U.S. 573, 586 (1980) (Board Review 05). The presumption applies where the entry was for “the purpose of arresting a resident of the house.” *Id.* at 588.

However, warrantless entries do not violate the Fourth Amendment where a party provides valid consent. Though no one factor is determinative of the voluntariness of consent, courts consider a variety of factors, including whether the person giving consent is in custody or under arrest, whether the person giving consent was evasive or uncooperative, and whether the person was advised that they had the right to refuse consent. *People v. Hernandez-Garcia*, 57 Misc.3d 1217(A) (Sup. Ct. Queens County, 2017) (Board Review 06). Additionally, consent may be demonstrated both verbally and via conduct. *People v. Johnson*, 46 A.D.3d 276, 277 (1st Dept 2007) (Board Review 07).

§ 87(2)(g)
It is undisputed that § 87(2)(b) stated that she wanted § 87(2)(b) to be removed from her home. She did so without being prompted or asked by police officers. She likely understood that this would require the officers to physically enter her home. However, by the time the ESU arrived and § 87(2)(b) understood that the entry would require physical damage to her door, § 87(2)(g) § 87(2)(b) repeatedly stated to Officers Agyei and O’Connor, every officer that she encountered, the 911 operators, and the Internal Affairs Bureau

that she wanted officers to “leave it alone” (Board Review 08, 09). These communications occurred before the ESU forced entry. § 87(2)(g)

§ 87(2)(g) the other officers and the IAB did not communicate this to Sergeant Pak. Short of going up to the § 87(2)(b) herself, which she was expressly told not to, § 87(2)(b) did everything within her power to communicate to the officers that she did not want the ESU to force entry. § 87(2)(g)

Notwithstanding consent, exigent circumstances may justify a warrantless entry, provided probable cause exists. In determining whether exigent circumstances are present, courts consider a variety of factors, including: “(1) the gravity or violent nature of the offense with which the suspect is to be charged; (2) whether the suspect is reasonably believed to be armed; (3) a clear showing of probable cause . . . to believe that the suspect committed the crime; (4) strong reason to believe that the suspect is in the premises being entered; (5) a likelihood that the suspect will escape if not swiftly apprehended; and (6) the peaceful circumstances of the entry.” *People v. McBride*, 14 N.Y.3d 440, 446 (2010) (Board Review 10). These factors are not definitive or exhaustive; ultimately, the inquiry hinges on whether, in light of all the facts of the particular case, there was an urgent need that justifies a warrantless entry. *Id.*; *United States v. Martinez-Gonzalez*, 686 F.2d 93, 100 (2d Cir. 1982) (Board Review 11).

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(b) was outside of the premises when the officers arrived. § 87(2)(b) was locked inside an apartment on a high floor with no other exits. Any further danger to § 87(2)(b) was completely attenuated. She was not a hostage at any point during the encounter. The officers on the scene characterized § 87(2)(b) injuries as “cuts” and bruises. Although § 87(2)(b) had barricaded himself inside the apartment, he did not pose an immediate threat to anyone. He was completely isolated and unarmed. This is especially true considering the number of officers present throughout the evening. These officers could have frozen the scene, enabling other officers to obtain a warrant.

Indeed, Sergeant Pak’s repeated attempts to convince § 87(2)(b) to exit voluntarily and prolonged period during which the ESU also attempted to gain voluntary compliance evince the lack of urgency. Sergeant Pak’s statements during his CCRB interview that he was concerned about a possible weapon inside the premises are belied by his contemporaneous statements during the incident. He told multiple people, including Captain Lee, the Duty Captain who on the scene, that § 87(2)(b) injuries were “cuts” and that there was no knife. § 87(2)(b) was consistent throughout that § 87(2)(b) did not stab her intentionally. There is no dispute that § 87(2)(b) committed a violent felony when he assaulted § 87(2)(b). During the final conversation between Sgt. Daly from the ESU and Sgt. Pak, before the ESU forced entry, Sgt. Pak tells Sgt. Daly that § 87(2)(b) will be charged with felony assault. In his testimony to the CCRB, Sgt. Pak cited to the felony assault as one of the reasons why he called the ESU. § 87(2)(g)

§ 87(2)(b) may have been in danger had officers left the scene. But the alternative to a warrantless entry was not to leave the victim; the alternative was to freeze the scene and seek a warrant.

§ 87(2)(g)

Allegation C – Abuse of Authority: Officers damaged § 87(2)(b) property.
Allegation D – Abuse of Authority: Officers damaged § 87(2)(b) property.

In her statement to the CCRB, § 87(2)(b) stated that after the officers arrested § 87(2)(b) she returned to her apartment, which was in a state of disarray. § 87(2)(b) had two relatively new couches in her apartment. Both couches were broken into pieces, as though they had been disassembled entirely. § 87(2)(b) did not observe how her couches were broken, but reported that on the night of the incident, officers had told her that they would give her a report stating that § 87(2)(b) broke the couch. When filing her complaint, § 87(2)(b) also reported that a District Attorney – whose name she did not provide – told her that he “personally” reviewed the body-worn camera footage and clearly saw the officers break her couch.

In his statement to the CCRB, § 87(2)(b) stated that when officers came inside the apartment, they broke a chair and began “digging up” the apartment (Board Review 12). § 87(2)(b) stated that the officers searched through the apartment to make sure it was clear of weapons and drugs. He did not specify how officers broke the couches.

In his statement to the CCRB, Sgt. Pak stated that he did not observe how or when the ESU entered § 87(2)(b) apartment. He further stated that aside from the ESU officers on scene, no other officers entered § 87(2)(b) apartment. Sgt. Pak also reported that he was not aware of property damage caused to § 87(2)(b) couches.

According to the body-worn camera footage from several officers, § 87(2)(b) used several pieces of furniture to barricade himself inside § 87(2)(b) apartment (Board Review 01). Detective Sergeant Steven Orlando from the ESU was the first officer to breach § 87(2)(b) apartment. His BWC shows the condition of the first couch at 1:59 minutes in the recording. The couch is already partially disassembled; a large wooden plank is jutting out of a partially empty frame and cushions are missing (Board Review 13). Detective Sergeant Matthew Gale was another officer from the ESU who entered § 87(2)(b) apartment. The second couch is visible in his BWC at 2:52 minutes into the recording (Board Review 01). No officers are depicted damaging § 87(2)(b) property.

Additionally, Sgt. Daly from the ESU noted in his memo book that § 87(2)(b) had “placed furniture against the door” (Board Review 14).

§ 87(2)(g), DTS Orlando’s BWC shows that while the ESU officers do move this couch frame during their security sweep and apprehension of § 87(2)(b) inside the apartment, officers did not damage either of § 87(2)(b) couches. The first couch was already disassembled and broken by the time the ESU breached the doorway and forced entry. § 87(2)(g) in DTS Gale’s BWC, the second couch is visible in a corner of § 87(2)(b) living room and is intact. § 87(2)(b) statements about the couches are not credible in light of the footage.

§ 87(2)(g)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]
 [REDACTED]
 [REDACTED]

- § 87(2)(b)
[REDACTED]
[REDACTED]
 - [REDACTED]
[REDACTED]
 - [REDACTED]
[REDACTED]
 - [REDACTED]
[REDACTED]
- Sgt. Pak has been a member of service for twenty years and has been a subject in two CCRB complaints and seven allegations, none of which were substantiated (Board Review 17). § 87(2)(g), § 87(4-b)
[REDACTED]
[REDACTED]
[REDACTED]

- This complaint was not suitable for mediation.
- As of August 16, 2022, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regards to this incident (Board Review 18).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Signature

Print Title & Name

Date

Reviewer:

Signature

Print Title & Name

Date